

The Illinois Retailers' Occupation Tax and Use Tax do not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. See 86 Ill. Adm. Code 130.340. (This is a GIL).

April 27, 2001

Dear Xxxxx:

This letter is in response to your letter dated March 15, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We respectfully request a General Information Letter pursuant to 2 Ill. Admin. Code Section 1200.120 regarding the taxability of the airplanes purchased by our clients. The paragraphs below completely discuss the specific facts and legal authorities. There are no audits or litigation cases pending with respect to this request. To the best of the knowledge of both our clients and our office the Department has not previously ruled on the same or a similar issue for our clients or predecessors. Neither our clients nor our office previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued. We thank you in advance for your prompt attention to this matter.

Facts

Our clients purchased the airplanes in the following manner. Due to the high demand and low supply of the type of airplanes at issue, our clients purchased "positions" held by other entities who long ago placed their orders for the same types of airplanes. Once the "positions" were purchased from the other entities, our clients purchased the airplanes outside of Illinois from the manufacturer when delivered. Our clients provided rolling stock certificates to the manufacturer from whom the airplanes were delivered. Such rolling stock certificates contained the names of the lessees to whom the airplanes were leased by our clients. At the time that the airplanes were purchased, our clients entered into 1-year lease agreements with Illinois-based aviation management companies that are Part 135 certified. The aviation management company lessees used our clients' airplanes in their interstate charter businesses. While under lease with the aviation management companies, our clients' airplanes traveled in interstate commerce for hire for approximately 75% of their total use.

Legal Authorities

We believe that our clients' airplanes qualify for the rolling stock exemption set forth in Section 3-55 of the Use Tax Act (35 ILCS 105/3-55):

Sec. 3-55. Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

- (b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for-hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire....
- (c) The use, in this State, by owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire....

Our clients' airplanes were leased to Illinois-based aviation management businesses under a lease of 1 year executed and in effect at the time of purchase, and our clients' lessees operated the airplanes as interstate carriers for hire with the airplanes traveling across state lines for approximately 75% of their total use. Our clients' also provided rolling stock exemption certificates (RUT-7) to their vendor that included the names of our clients' interstate lessees. Therefore, we believe that our clients' airplanes qualify for the rolling stock exemption.

Request for Ruling

We respectfully request that the Department issue a General Information Letter indicating that our clients' airplanes qualify for the rolling stock exemption set forth in 35 ILCS 105/3-55.

Thank you again for your prompt attention to this matter. Please call the undersigned if you need any additional information. Also, please call the undersigned prior to issuing a letter that does not indicate that our clients' airplanes qualify for the rolling stock exemption.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax and Use Tax do not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. The Department's rules governing the rolling stock exemption are found at 86 Ill. Adm. Code 130.340, copy enclosed.

The exemption applies to sales of tangible personal property to lessors under leases of one year or longer executed or in effect at the time of purchase with interstate carriers for hire for use as rolling stock moving in interstate commerce. A lessor will not incur Use Tax on the purchase of the

vehicle that is leased to the interstate carrier for hire for use as rolling stock moving in interstate commerce under a lease term of one year or longer. See 35 ILCS 105/3-55(b) and 120/2-5(12). If a lessor leases a vehicle to an interstate carrier for hire under a lease term of less than one year, the rolling stock exemption is also available because the tax does not apply to the use by (or sale to) lessors, owners, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. See 35 ILCS 105/3-55(c) and 120/2-5(13).

Effective August 14, 1999, motor vehicles, trailers, and property attached to those motor vehicles and trailers must carry persons or property for hire in interstate commerce on 15 or more occasions within a 12- month period to qualify for the exemption. See 35 ILCS 120/2-51. For other types of property used in interstate commerce, the interstate carriers must be able to show, from their books and records, that the property has moved in interstate commerce for hire on a regular and frequent basis in order to qualify for the exemption.

Purchasers also must be recognized by the appropriate federal or state regulatory agency as interstate carriers for hire and have received a Certificate of Authority to engage in interstate commerce. Please note that it is not the type of item that determines whether or not it qualifies as rolling stock, but rather how a qualifying interstate carrier uses the item. In addition to receiving the proper Certificate of Authority, purchasers should be aware that only those items used specifically as rolling stock would qualify. See the enclosed copy of 86 Ill. Adm. Code 130.340.

When making a purchase of qualifying property, the purchasers must provide the sellers with a certification that they are interstate carriers for hire and that they are purchasing the property for use as rolling stock moving in interstate commerce. If the purchasers are lessors, the purchasers must give the sellers a certification to that effect identifying the lessee interstate carriers for hire. Form RUT-7, Rolling Stock Affidavit, which is signed by the purchasers, is used to provide the required certification in order to execute the statutory exemption.

You also provided information that the airplanes make approximately 5 or more trips per month resulting in more than 60 trips per year. Based on this information and the representations in your letter that the leases of the airplanes are to interstate carriers for hire for use as rolling stock moving in interstate commerce and that the airplanes are used in interstate commerce approximately 75% of the time, we believe that the airplanes would probably qualify for the rolling stock exemption.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk

Enc.